

Service Date: July 27, 2001

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF 3 RIVERS TELEPHONE )	UTILITY DIVISION
COOPERATIVE, INC., Application for Telephone )	
EAS between Certain Identified Exchanges and )	DOCKET NO. D99.7.172
the U S WEST COMMUNICATIONS, INC., )	
Great Falls Exchange or Great Falls EAS Region )	ORDER NO. 6221c

IN THE MATTER OF MID-RIVERS TELEPHONE)	UTILITY DIVISION
COOPERATIVE, INC., Application for Telephone )	
EAS between Certain Identified Exchanges and the )	DOCKET NO. D2000.6.95
U S WEST COMMUNICATIONS, INC., Billings )	
Exchange or Billings EAS Region )	ORDER NO. 6328a

ORDER ON RECONSIDERATION

Introduction

1. On March 22, 2001, the Public Service Commission (PSC) issued an "Order on PSC Authority to Require Intercompany Compensation in EAS Arrangements" (initial order) in the above matters. *See, Docket No. D99.7.172, Order No. 6221b, and Docket No. D2000.6.95, Order No. 6328 ("Initial Order")*. In that order the PSC concluded it does not have authority to order intercompany compensation in telephone extended area service (EAS) arrangements when one of the carriers involved objects to payment of such compensation. *Initial Order, paras. 3 (statement of issue) and 12 (resolution of issue)*.

2. On April 20, 2001, 3 Rivers Telephone Cooperative, Inc. (3 Rivers), and Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers), filed motions for reconsideration of the initial order. On May 10, 2001, Qwest Corporation (Qwest, formerly U S West Communications, Inc.) filed its response to the motions. On May 22, 2001, 3 Rivers and Mid-Rivers filed replies to Qwest's response. 3 Rivers and Mid-Rivers requested oral argument on reconsideration. Oral argument was held July 2, 2001.

Discussion

3. Mid-Rivers (Docket No. D2000.6.95) has applied for EAS between its Billings-area Musselshell exchange and Qwest's Billings EAS region. 3-Rivers (Docket No. D99.7.172) has applied for EAS between several of its Great Falls-area exchanges (i.e., Belt, Carter, Fairfield, and others) and Qwest's Great Falls EAS region. There is no dispute that there can be intercompany EAS arrangements between Mid-Rivers and Qwest and 3 Rivers and Qwest. There is no dispute that there can be agreed-to intercompany compensation arrangements. Where the dispute rests is in regard to whether the PSC has authority to compel intercompany compensation in EAS arrangements when one of the carriers involved opposes intercompany compensation. Qwest opposes intercompany compensation regarding the Mid-Rivers and 3 Rivers proposals.

4. The issue is important to each of the parties because of the costs involved in EAS. EAS is revenue neutral (*ARM 38.5.1315(3)*), which means, in part, that companies entering EAS arrangements are entitled to recover revenues lost as a result of EAS. Lost revenues are primarily toll (long distance and related) revenues, as a result of toll calls becoming local in the EAS area. If a company, particularly regarding exchanges having a small number of customers, petitioning for EAS can spread the cost of EAS among not only its own customers but the customers of the petitioned company, particularly if the petitioned company exchange or region has a large number of customers, the EAS increment (charge to collect lost revenues) per customer becomes relatively small. If the cost of EAS cannot be spread, the amount customers of the petitioning company would be required to pay for EAS could be prohibitive. *See, Initial Order, paras. 1-4.*

5. The arguments on reconsideration do not appear to be entirely new. The PSC analyzed several of the arguments in the initial order and disagreed with them. *See, e.g., Initial Order, para. 10 (general powers of the PSC at § 69-3-102, MCA, do not provide required authority).* However, the PSC will consider these arguments again along with any new arguments presented.

6. 3 Rivers and Mid-Rivers argue the PSC has statutory authority to compel intercompany compensation in EAS arrangements. 3 Rivers and Mid-Rivers argue that §§ 69-3-

102, 69-3-103, 69-3-110, and 69-3-807, MCA, provide the required authority. The PSC does not see the requisite authority in these statutes, to the extent of clarity suggested by Mid-Rivers and 3 Rivers, or at all, and can identify no other statute which provides the PSC with authority to order intercompany compensation in EAS arrangements when one of the carriers objects. Such statute does not exist.

7. The referenced §§ 69-3-102 and 69-3-103, MCA, are general powers statutes. These are important statutes and are cited frequently in support of PSC authority. However, neither statute is a stand-alone grant of all-encompassing authority in the PSC. Both statutes create broad powers, but those powers do not go beyond administering, implementing, or enforcing something the PSC has otherwise been enabled to do. *See, § 69-3-102, MCA (powers are "subject to the provisions of this chapter"); § 69-3-103, MCA (powers are "in the exercise of the powers conferred by this chapter")*. The PSC cannot order intercompany compensation in EAS arrangements based solely on the powers created in these general powers statutes. There must first be some other qualifying form of legislative authority which would be administered, implemented, or enforced through the general powers statutes. The parties have not identified any such legislation and the PSC cannot identify any either.

8. On the issue of PSC general-powers, 3-Rivers argues the PSC's initial order (at para. 11) is circular. The PSC agrees it could be read that way, as the context is less than clear. The "circular" reasoning (*Initial Order, para. 11, first three sentences*) is in context of discussing or commenting on the parties' positions argued prior to the initial order and regarding how the PSC should go about determining whether it has or might have authority to do a certain thing. Essentially the PSC is stating that, although it does not agree that its general powers statutes provide the requisite authority regarding intercompany compensation in EAS arrangements, that does not mean that there are no powers derived from general powers, so long as implementing those powers related to some specific charge in enabling legislation. Further discussion in the initial order (regarding application of general powers) would have made no difference because

3 Rivers and Mid-Rivers had not identified a statute from which the PSC could base implementation of general powers.

9. On reconsideration 3 Rivers and Mid-Rivers suggest that §§ 69-3-807 and 69-3-110, MCA, are the specific legislative authority, stand-alone or triggering general powers, through which the PSC has authority to order intercompany compensation in EAS arrangements. The PSC does not agree. In applicable part, § 69-3-807, MCA, simply allows the PSC to set rates for the provision of regulated services by telecommunications companies, which is a principal, long-standing function of the PSC. The PSC sees nothing in the statute having anything to do with, say about, or imply regarding intercompany compensation in EAS arrangements. Similarly, in applicable part, § 69-3-110, MCA, simply requires the PSC to enforce its rules. The statute does not make rules applicable where otherwise not applicable or enforceable in a manner otherwise unenforceable.

10. The PSC determines that the above discussion resolves the issue on reconsideration. There is no other argument presented that is important to the issue. As stated in the initial order, absent a statute upon which the PSC can reasonably rely as authority for ordering intercompany compensation in EAS arrangements, the PSC does not have statutory authority to take such action, and there is no PSC administered statute which allows expressly, by implication, or as a necessary incident thereto, the ordering of intercompany compensation in EAS arrangements. *Initial Order, para. 12.*

11. Other arguments are made by the parties and the PSC will comment on at least those the PSC anticipates the parties might believe PSC analysis or comment is important. 3 Rivers and Mid-Rivers argue there is no statute prohibiting the PSC from ordering intercompany compensation in EAS arrangements. That is true. However, the scope of authority for an agency to do something that is contested is not defined by what is not prohibited. 3 Rivers and Mid-Rivers also return to their initial order arguments regarding Qwest's active promotion of spreading EAS costs among all customers in all exchanges involved in previous EAS dockets. The PSC does not agree that such makes any legal difference in the present cases. The situation

was different at the time Qwest made those arguments, as intercompany compensation was not an issue or not contested. Mid-Rivers and 3 Rivers also suggest that ARM 38.5.1315(3) (costs of EAS to be born by those benefiting), expressly requires equal sharing of the costs of EAS. The word "equal" does not appear in the rule, but even if it did, absent underlying statutory authority the rule could not be extended in a manner requiring intercompany compensation in EAS arrangements. Qwest argues that there can be no intercompany compensation because ARM 38.5.1315(3) requires EAS to be revenue neutral and payments to another carrier would require changes in revenues. The PSC does not agree. In context, revenue neutral simply means the company or companies involved in EAS will be made whole (for lost revenues) through an EAS rate increment.

12. The PSC affirms its initial order in these matters.

Done and dated this 24th day of July, 2001, by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GARY FELAND, Chairman

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JAY STOVALL, Vice Chairman

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BOB ANDERSON, Commissioner

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MATT BRAINARD, Commissioner

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BOB ROWE, Commissioner  
(voting to dissent, opinion attached)

ATTEST:

Rhonda J. Simmons  
Commission Secretary

(SEAL)

OPINION OF COMMISSIONER ROWE

As the Commission's order makes clear, parties may stipulate to inter-company Extended Area Service arrangements. Previously, the Commission found such an agreement to be in the public interest, allowing customers in West Glacier to make local calls to the rest of Flathead County. I strongly encourage the parties in the present matter to explore a similar mechanism, or other mechanisms that promote customers' desires for affordable calling (with simple and predictable charges) within their community of interest.

RESPECTFULLY SUBMITTED this 24th day of July, 2001

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BOB ROWE, Commissioner